

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 26, 2007

DERRICK ANTHONY HILL v. STATE OF TENNESSEE

Appeal from the Criminal Court for Sullivan County
No. C51,898 R. Jerry Beck, Judge

No. E2006-01714-CCA-R3-PC - Filed July 11, 2007

The petitioner, Derrick Anthony Hill, appeals pro se from the Sullivan County Criminal Court's summary dismissal of his petition for post-conviction relief challenging his guilty plea to one count of possession of cocaine in a drug-free school zone. The trial court summarily dismissed the petition because it failed to state a factual basis for his claims of involuntary plea and ineffective assistance of counsel. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and THOMAS T. WOODALL, J., joined.

Derrick Anthony Hill, pro se, Whiteville, Tennessee.

Robert E. Cooper, Jr., Attorney General & Reporter; Rachel West Harmon, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Joseph Eugene Perrin, Assistant District Attorney General, for appellee, State of Tennessee.

OPINION

According to the information contained in the pro se petition for post-conviction relief, on July 21, 2005, the petitioner pled guilty to one count of possession of a Schedule II drug in a school zone and one count of introduction of a Schedule IV drug in a penal facility and received a sentence of eight years as a Range I, standard offender to be served at one hundred percent. On March 31, 2006, the petitioner filed his pro se petition for post-conviction relief. On April 5, 2006, the trial court conducted a preliminary consideration of the petition and found that the petition was conclusory in form and failed to assert any factual basis in support of the allegations. The trial court granted the petitioner twenty-one days in which to file an amended petition in compliance with the

Post-Conviction Procedure Act. See Tenn. Code Ann. § 40-30-106(d). On April 20, 2006, the petitioner filed an amended petition that is a virtual duplicate of the original petition in substance; thus, on May 5, 2006, the trial court dismissed the petition for failure to state any factual basis in support of his claims.

We note initially that the petitioner filed his notice of appeal with the trial court clerk on August 10, 2006, more than ninety days after the final order dismissing the post-conviction petition was filed on May 5, 2006. However, the petitioner had filed an additional pleading on May 8, 2006, which contested a summary dismissal but still failed to allege any facts in support of his post-conviction allegations. Presumably, the final order dismissing the petition and this additional pleading crossed in the mail. The trial court reviewed this additional pleading and dismissed it “without further action” on June 6, 2006. Although the petitioner’s notice of appeal was not filed with the court clerk until August 10, the pleading reflects that it was delivered to the prison mail room on July 13, 2006, just thirty-eight days after the entry of the final order in this case. Therefore, we have chosen to waive the untimely filing given the petitioner’s pro se status and the short period by which he exceeded the thirty-day deadline for filing a timely notice of appeal. See Tenn. R. App. P. 4(a) (providing that this court may waive an untimely notice of appeal in the interest of justice).

On appeal the petitioner asserts that the trial court erred in dismissing his pro se petition without an evidentiary hearing. Initially, the state asserts that the petitioner has waived this issue by failing to include any argument or appropriate references in his brief. Tenn. R. Ct. Crim. App. 10(b). We agree that the pro se brief is lacking in references to the record and argument as it relates to the propriety of the summary dismissal. Nevertheless, in the interest of justice, we choose to address this issue on its merits.

The Post Conviction Procedure Act outlines the specific requirements for all petitions for post-conviction relief. See Tenn. Code Ann. § 40-30-101 to -111. Specifically, Tennessee Code Annotated section 40-30-106(d) provides:

The petition must contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings. Failure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition. If, however, the petition was filed pro se, the judge may enter an order stating that the petitioner must file an amended petition that complies with this section within fifteen (15) days or the petition will be dismissed.

In this case, the petitioner filed his post-conviction petition on the standard form and checked the form allegations he wished to assert for relief. The allegations include an unlawfully induced guilty plea or involuntary guilty plea, unconstitutionally obtained evidence and ineffective assistance

of counsel. The form instructs a pro se petitioner to “include all facts which support the grounds” and to “attach a separate sheet of paper listing each constitutional violation [claimed], [and] list each and every fact that ... supports this ground.” Nevertheless, the petitioner failed to include any facts to support his allegations, even after being given additional time to amend the petition. Therefore, we conclude that the trial court properly dismissed the petition for post-conviction relief. Burnett v. State, 92 S.W.3d 403, 406 (Tenn. 2002) (citing Tenn. Code. Ann. § 40-30-206(d)); see also Edward Beard v. State, W2004-00627-CCA-R3-PC, 2005 WL 675260 (Tenn. Crim. App. Mar. 23, 2005) (petition properly dismissed for failure to include facts to support allegations when petitioner only checked boxes on standard form listing grounds for relief).

CONCLUSION

The trial court properly dismissed the petition for post-conviction relief because the pro se petitioner failed to allege facts in support of his claims for relief. Therefore, the judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE